

SLT city manager explains use of outside counsel



To the publisher,

As I mentioned I am writing to respond to your voice message. As I mentioned, I was out of the area when you left your voicemail, and I am now back in the office. I appreciate you contacting me on this matter.

Let me address the questions you posed regarding legal assistance provided to Mr. [Bruce] Grego in early 2009 and give you a little background information. Early in 2009 issues arose regarding the eligibility to vote on matters relating to RDA Project Area No. 2 for Councilmember [Hal] Cole. New council members or returning former members need to be certain that they check to see if they have any conflicts of interests and this is done for all members. Sometimes an opinion is kept in-house with the city attorney.

For maximum protection however to all parties, an FPPC (Fair Political Practices Commission) opinion is sought because I understand that in a major conflict issue the opinion of the city attorney cannot save an elected official from fine etc if in fact a conflict of interest exists. For certainty, an FPPC opinion is sought. Sometimes outside legal counsel is sought because the legal expertise needed does not exist in-house or the city attorney is away from the office, etc.

Framing the question and providing the Fair Political Practices Commission [FPPC] all of the facts become an

important component of getting a good answer from the FPPC.

1. Yes, an outside legal opinion was obtained from Richards, Watson & Gershon [RWG] on Feb. 2, 2010, for Councilmember Cole discussing his eligibility to vote on proposed Project Area No. 2. I approved seeking the opinion. Our practice was to ensure that members of the City Council did not fall unwittingly into a conflict of interest trap [creating liability for themselves and possibly voiding a vote on a city/RDA matter] by seeking expert legal advice.

2. At some point, the issue of Councilmember Grego's eligibility to vote came up in regard to the Chateau Project because he represented the Lakeside Park Association. As you will recall, prior to the Chateau bankruptcy the developers were bringing forward a new interim financing plan that required a council vote. Staff needed a determination as to whether Mr. Grego could vote on a proposed financing for the project. As I recall, the city attorney was out of the country on vacation, and staff was preparing to seek an outside legal opinion in regard to the situation. When I alerted Mr. Grego to the fact that staff was seeking an outside legal opinion regarding his eligibility, he asked me if he could use the services of local attorney, and former City Attorney and STRA Agency Counsel Dennis Crabb. He said that he thought Mr. Crabb would have a better grasp of the factual situation involving his situation and framing the question for the FPPC.

3. Given Mr. Crabb's past experience as South Lake Tahoe's city attorney and agency counsel and his current work as city attorney in other cities, the request to use his services, upon reflection, was reasonable. Initially I was going to contract directly with Mr. Crabb for assistance. Mr. Grego said he would pay for the work performed by Mr. Crabb directly, and then decide whether to seek reimbursement. I told him the use of Mr. Crabb was reasonable to me under the circumstances and would in my opinion be an eligible city reimbursement request.

4. Before engaging the services of Mr. Crabb, Mr. Grego discussed the matter with me and asked if I thought it proper. I did and I also told him at the time that seeking reimbursement seemed proper to me.

5. The former city attorney reviewed the matter and thought the approval by my office was retroactive. It was not. Mr. Grego discussed using Mr. Crabb with me before he engaged his services. I believed the use of Mr. Crabb, a skilled and experienced municipal lawyer, was proper and told him that I thought reimbursement was appropriate if he later sought it.

6. It is reasonable in my view for the city to reimburse Mr. Grego for outside legal services in relationship to this matter based on the facts and circumstances as discussed here. Had Mr. Grego not needed a timely review by the FPPC, had the city attorney not been out of town, had the outside attorney not been one with vast municipal services, and had the attorney not been one who is most familiar with the facts and circumstances in this matter, I would not have approved reimbursement.

7. Prior to approving reimbursement to Mr. Grego a review of the matter was sought from the city attorney who approved payment and wrote a lengthy opinion in regard to the matter. The opinion is part of the public record and was provided to an interested member of the City Council along with backup upon inquiry to the Finance Department.

I hope this answers any questions you have. I am sorry I did not get back to you sooner.

Best wishes,

Dave Jinkens, South Lake Tahoe city manager